

REMARKS

Applicant is submitting an IDS with this response, along with an RCE so that the IDS may be considered.

Applicant has slightly amended claim 3 so that the term "head base" is consistently used.

Applicant thanks the Examiner for the indication that claims 1 and 3-20 are allowable.

Applicant now responds to the Examiner's comments in the order they appear in the Office Action.

The Examiner first rejected claim 2 for indefiniteness essentially on grounds that the Examiner believed the claim language did not reflect the proper use of means plus function language under 35 USC § 112 ¶ 6. Specifically the Examiner stated:

In claim 2, the word "means" is preceded by the word(s) "first" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Applicant asserts that the claim element "first means" is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, it is unclear whether the claim element is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph, because it is unclear whether the claim limitation is modified by sufficient structure for performing the claimed function or it is unclear whether the corresponding structure is sufficiently disclosed in the written description of the specification. (Office Action, p. 2.)

Applicant believes that the claim as previously written was in acceptable form, but in order to advance prosecution, the words "first" and "second" have been deleted before "means" as the Examiner appears to suggest above.

The Examiner next rejected claim 21 under 35 USC § 103 as obvious over Endelman and Simonson. Specifically, the Examiner stated:

The rejection from the previous office action is incorporated herein. In response to applicant's argument that the device is not foldable in half, Endelman shows (figures 2-3) where the device *is* foldable in half. **As broadly claimed**, the carriage portion 100 represents half of the device and the handle portion 130 represents a second half of the device; hence the device is foldable. (Office Action, p. 3, *italics emphasis in original; bold emphasis added.*)

The essence of the Examiner's rejection appears to be that claim 21 seeking to claim an overall device that folds in half. And based on this, claim 21 is obvious because Endelman shows a device that folds in half.

However, the language of claim 21 clearly sets forth the step of "folding the **reformer frame** from an extended lateral position to an upright folded position." (Emphasis added.) This is not at all disclosed by Endelman or Simonson, and Applicant respectfully submits that the Examiner's comment about folding a device in half are incorrect. As discussed in Applicant's remarks in the June 2, 2010 response, the method claimed by claim 21 is clearly distinguishable from any folding provided by Endelman and/or Simonson. These remarks are largely reproduced below, but with further emphasis on how the combination of Endelman and Simonson does not render claim 21 obvious.

As noted above, claim 21 discloses a method for storing and transporting a reformer exercise apparatus that involves "folding the **reformer frame** from an extended lateral position to an upright folded position." An embodiment of such an "extended lateral position" is depicted in Figure 1, and an embodiment of such an "upright folded position" is depicted in Figure 2 of the specification. The claimed folding

action transforms the head rail sections 201 and 203 and the foot rail sections 200 and 202 from an extended lateral position to an upright folded position.

The method of claim 21 further discloses that this folding action is achieved in part by “lifting a portion of the frame from a point near the center of a rail.” This “point near the center of a rail” is depicted in Figure 2 by the lifting bar 250. Lifting the frame using the lifting bar 250 would cause the first and second rails to bend at the hinges 240 that connect the head and foot rail sections. Thereafter, claim 21 discloses that the folding action is continued by rolling “the foot sections of the first rail and the second rail toward the head of the reformer frame until the reformer frame is in a folded upright position.” Therefore, in the final folded upright position as depicted in Figure 2, the right foot rail section 200 (and by implication the left foot rail section 202) is standing nearly upright and in close proximity to the head of the reformer frame, resulting in a reformer frame that is folded near the center of its rails.

In contrast, Endelman does not disclose such a frame-folding step. Instead, the storage position of the reformer exercise apparatus of Endelman only involves folding its trapeze frame down so that it lies on top of the Endelman apparatus' frame. Figure 2 of Endelman depicts an embodiment of the apparatus in its operational position and Figure 3 depicts an embodiment of the apparatus in its storage position. To transform the apparatus from its operational position to its storage position, “[t]he U shaped trapeze frame may be pivoted in the bracket assemblies to a folded position so as to lie generally along the *top* of the reformer frame for compact storage.” (Endelman, col. 2, lines 60-63, emphasis added) Therefore, the method to transform Endelman's

apparatus from its operational position to its storage position is substantially different than the method recited by claim 21.

Specifically, Endelman does not disclose “folding the reformer frame from an extended lateral position to an upright folded position.” In Endelman, the folding action is applied to the *trapeze frame*, whereas claim 21’s folding action is applied to the *reformer frame*. Furthermore, after the folding action in Endelman, the reformer frame is unaltered and remains in an extended lateral position, whereas after the method of claim 21 the reformer frame is transformed from an extended lateral position to an *upright and folded* position.

Endelman also fails to disclose a folding action that comprises “lifting a portion of the frame from a point near the center of a rail” or rolling “the foot sections of the first rail and the second rail toward the head of the reformer frame until the reformer frame is in a folded upright position.” Both of these claim limitations of claim 21 involve actions being applied to the reformer frame, with the end result of performing these actions being a reformer frame that is folded substantially in half. Endelman’s folding action, however, is only applied to the trapeze frame, not to the reformer frame, and the end result of performing Endelman’s folding action is a trapeze frame that’s folded down onto reformer frame. In contrast, the method of claim 21 discloses folding the reformer frame in half. Accordingly, while the reformer frame of the Endelman apparatus itself remains substantially unchanged and extended, the reformer frame of claim 21 is in a “folded upright position” at the completion of the method described. In this way, the combination of Endelman with Simonson does not disclose all of the limitations of claim 21.

Because the combination of Endelman with Simonson does not disclose all the claim limitations of claim 21, Applicants respectfully submit that claim 21 is in condition for allowance.

Conclusion

Applicant respectfully submits that this case is now in allowable form as to all claims, and Applicant requests that this case be passed onto allowance. If the Examiner has any questions regarding the foregoing, please contact the undersigned at (213) 243-2864.

Respectfully submitted,

JONES DAY

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By:



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